

Generally, photocopiers do not qualify for the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

December 27, 2016

Re: COMPANY Technical Assistance Advisement Regarding sales tax on Print for Pay leases.

Dear Xxxxx:

This letter is in response to your letter dated December 2, 2016, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are writing to request a Technical Assistance Advisement from the Illinois Department of Revenue regarding the State's stance on the taxability of self-service copiers and printers leased to retail copy shops.

ISSUES:

1. The COMPANY 1 and other retail printing customers such as COMPANY 2 and COMPANY 3 offer self-service copying and printing solutions to their customers, these stores are trying to claim a manufacturing exemption for the leased equipment on the grounds that they are a manufacturer of the copied materials and those materials are considered new tangible personal property created by the leased equipment for sale to their customers.
2. The COMPANY 1 other retail printing customers are trying to claim a resale exemption on the leased equipment based on the premise that they are using the equipment to resell the copies they are purchasing in the "Print for Pay" lease agreement.

FACTS:

COMPANY provides leasing and equipment loan solutions to small businesses and middle market companies in a wide range of industries. We provide financing solutions to our borrowers and lessees and assist manufacturers and distributors in growing sales by providing customized finance solutions to their commercial clients.

COMPANY 1 and other retail printing customers such as COMPANY 2 and COMPANY 3 will lease or rent a self-service copier or printer in a "Print for pay" lease agreement from COMPANY. A "Print for pay" lease agreement is a modified cost per copy lease agreement where the customer only pays & charges for the amount of copies that are consumed. The equipment is located in retail store location and the equipment is made available to the general public for self-service copy and printing needs.

REQUEST FOR RULING/ADVISEMENT:

We request a Technical Assistance Advisement to establish an opinion based on the issues presented above and the application to the facts as described in this request. We appreciate your assistance in this matter and are prepared to provide any additional information you may require. If you wish to discuss the fact and questions of the Technical Assistance Advisement please contact me at 904-380-5206 to discuss.

DEPARTMENT'S RESPONSE:

Manufacturing Machinery and Equipment Exemption

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. Use Tax is imposed on the privilege of using in this State any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

Retailers' Occupation Tax, however, does not apply to sales of machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. The manufacturing process is the production of articles of tangible personal property or assembling different articles of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. These changes must result from the process in question and be substantial and significant. See Section 130.330(b)(2). Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process, including machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment or for in-house manufacture of exempt machinery and equipment. See Section 130.330(c)(2).

Generally, photocopiers do not qualify for the manufacturing machinery and equipment exemption. In order to qualify for the manufacturing machinery and equipment exemption, the machinery or equipment must be used primarily in a manufacturing process that is commonly regarded as manufacturing.

Leases

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if a lessor is guaranteed at the time of the lease that the leased property will be sold, that transaction is considered to be a conditional sale at the outset of the transaction. Persons who purchase items for resale under conditional sales contracts can avoid paying tax to suppliers by providing certificates of resale that contain all the information set forth in 86 Ill. Adm. Code 130.1405. All receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2010.

A true lease generally has no buy out provision at the close of the lease. If a buy-out provision does exist, it must be a fair market value buy-out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors of a true lease owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability. In the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be allowed a credit against Use Tax to the extent of the amount of the tax properly due and paid in the other state. See 86 Ill. Adm. Code 150.310(a)(3).

Under either a true lease or a conditional sale, the lessee cannot claim a resale exemption for the photocopier acquired from COMPANY. The lessee is not transferring any ownership interest in the photocopier to a person that uses the photocopier to make copies. We would note, however, that under a true lease, the lessor as the end user of the tangible personal property, owes Use Tax on its cost price of such property. Under a true lease, the lessee of the tangible personal property has no Use Tax obligation. Persons who purchase items for resale under conditional sales contracts, the lessors/retailers, can avoid paying tax to suppliers by providing certificates of resale. All receipts received by a lessor/retailer under a conditional sales contract are subject to Retailers' Occupation Tax. The lessee incurs Use Tax on the payments made to the lessor under the conditional sales contract.

We would also note that the lessees may purchaser for resale the paper sold to persons using the photocopier and paying for the copies.

ST 16-0067-GIL

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:bkl